



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/171999

PRELIMINARY RECITALS

Pursuant to a petition filed February 10, 2016, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Milwaukee Enrollment Services ["MiLES"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone from Madison, Wisconsin on June 7, 2016. At petitioner's request Hearings scheduled for May 10, 2016, April 19, 2016, and March 17, 2016 were rescheduled. The Hearing for this matter was held at the same time as the Hearing for the following related matter concerning the same petitioner: LNO/172000.

The issue for determination is whether the Division of Hearings and Appeals ["DHA"] has jurisdiction to decide the merits of this matter.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

BY: [REDACTED], HSPC, Sr.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County, Wisconsin.
2. The following 3 Claims were established against petitioner for overpayments of FS in the total amount of \$5,283.00 with a current outstanding balance of \$4,032.00 spanning the time period February 1, 2004 to August 31, 2005:
 - (I) Claim Number [REDACTED]; February 1, 2004 to June 30, 2004; \$1,490.00; current outstanding balance of \$727.00; and,
 - (II) Claim Number [REDACTED]; July 1, 2004 to June 30, 2005; \$3,305.00; current outstanding balance of \$3,305.00.
 - (III) Claim Number [REDACTED]; July 1, 2005 to August 31, 2005; \$488.00; current outstanding balance of \$0 (zero)
3. Petitioner was sent a letter notice from the State of Wisconsin dated December 22, 2006 and entitled *Important Notice About Your State Tax Refund and Credits*; the written notice stated that petitioner's Wisconsin State Tax Refund may be intercepted in the total amount of \$5,106.00 to repay the FS overpayments identified in *Findings of Fact #2*, above; the written notice also notified petitioner of her appeal rights, including the 30-day time limit for requesting a Hearing; the written notice was sent to the last-known address of petitioner at the time it was sent.
4. Petitioner requested a Hearing by a handwritten letter dated February 10, 2016 and received by DHA on February 11, 2016 via U.S. Priority Mail postmarked February 10, 2016.

DISCUSSION

An appeal of a tax intercept is timely only if a Hearing is requested within 30 days after the date of the tax intercept notice. Wis. Stat. §§ 49.85(3)(a)2. & (b)2. (2013-14); See also, Wis. Admin. Code § HA 3.05(3)(b) (February 2013). A Hearing request that is not made within the allowed 30 days must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e) (February 2013).

In this case, the tax intercept notice is dated December 22, **2006**. Petitioner's request for a Hearing was not made until February **2016**. See, Wis. Admin. Code § HA 3.05(3)(c) (February 2013). This is nearly 10 years outside of the allowed 30 days. Thus, petitioner's appeal is not timely and must be dismissed for lack of jurisdiction.

Finally, it is noted that petitioner has already had a Hearing concerning the FS overpayment Claims identified in *Finding of Fact #2*, above, and the FS overpayment Claims were upheld. An appeal was filed with the Circuit Court and the Circuit Court sustained the Decision to uphold the FS overpayment Claims. DHA Case No. FOP-73826 (Wis. Div. Hearings & Appeals February 9, 2006; Circuit Court sustained June 28, 2006) (DHS).

CONCLUSIONS OF LAW

For the reasons discussed above, DHA does not have jurisdiction to decide the merits of this matter.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby DISMISSED and DHS may certify the amount of \$4,032.00 to the Department of Revenue, pursuant to Wis. Stat. § 49.85 (2013-14), for purpose of a tax intercept of petitioner to repay the FS overpayment Claims identified in *Finding of Fact #2*, above.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 9th day of June, 2016

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 9, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit